

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VEHICLE IP, LLC,

Plaintiff,

v.

AT&T MOBILITY LLC, CELLCO
PARTNERSHIP, NETWORKS IN MOTION,
INC., TELECOMMUNICATION SYSTEMS,
INC. and TELENAV INC.,

Defendants.

C.A. No. 09-1007 LPS-CJB

REDACTED VERSION

**PLAINTIFF'S OPENING BRIEF IN SUPPORT OF ITS COMBINED MOTION FOR
PARTIAL SUMMARY JUDGEMENT OF INFRINGEMENT AND MOTION TO
EXCLUDE TESTIMONY BASED ON THE WRONG CLAIM CONSTRUCTIONS**

Dated: June 23, 2016

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I. NATURE AND STAGE OF THE PROCEEDINGS

Plaintiff filed this infringement action against Defendants in 2009.¹ In late 2011, the Court construed several terms in the '377 patent claims.² The Defendants filed summary judgment motions based on those constructions, which the Court granted in early 2013.³ In late 2014, the Federal Circuit reversed the construction of two terms, vacated the judgment of noninfringement, and remanded the case for further proceedings. In December 2015, Plaintiff narrowed the case by electing 15 asserted claims.⁴ Both fact and expert discovery are complete. The hearing on summary judgment and *Daubert* motions is scheduled for September 7, 2016.⁵

II. SUMMARY OF THE ARGUMENT

Throughout this case, Defendants' approach to infringement has been to identify features in their products and then ask the Court to exclude those features from the claims by pointing to some non-limiting phrase or figure in the '377 patent. Defendants' experts continue this strategy by adding unsupported requirements to the Court's construction of "dispatch" that are contrary to the intrinsic record. The structure, function, and operation of the accused products are not in dispute. When the claim language is applied in a manner consistent with the Court's claim constructions and intrinsic record, Defendants literally infringe at least five of the asserted claims as a matter of law. Accordingly, Plaintiff respectfully requests partial summary judgment of infringement to focus the trial on the disputes that present a genuine fact issue for the jury.

Moreover, because Defendants' expert testimony is inconsistent with the Court's claim constructions and the intrinsic record, it should be excluded as unreliable and unhelpful to the

¹ D.I. 1.

² D.I. 168.

³ D.I. 241.

⁴ D.I. 306.

⁵ D.I. 258.

finder of fact. Any finding of noninfringement based on these improper opinions would be erroneous as a matter of law. Accordingly, Plaintiff also respectfully requests that the Court grant its motion to exclude this improper testimony.

III. CONCISE STATEMENT OF FACTS

A. The '377 Patent

The inventions described and claimed in the '377 patent were developed in the 1990s by a group of inventors at a publicly-traded company called HighwayMaster. HighwayMaster developed award-winning mobile communications technology for the vehicle management industry, and obtained more than forty U.S. patents that covered its technology. The '377 patent, titled "Method and Apparatus for Determining Expected Time of Arrival," issued on November 16, 1999 and stems from an application filed February 10, 1995 that issued as U. S. Patent No. 5,724,243. Only the '377 patent is asserted in this matter.

The '377 patent discloses systems and methods for determining an expected time of arrival of a vehicle at a way point that overcame the flaws of existing systems.⁶ The '377 patent discloses a central platform (called a "dispatch" in the patent) that, among other things, processes navigation information (called "destination information") and communicates that information to mobile devices in vehicles via, for example, the cellular telephone network.⁷

In this system, the process of determining an expected time of arrival begins with the dispatch generating destination information.⁸ The destination information may include

⁶ Ex. 1 at 1:15-42. Unless otherwise noted, all cites to exhibits are to the exhibits attached to the Declaration of Jason M. Zucchi in Support of Plaintiffs' Combined Motion for Partial Summary Judgement of Infringement and Motion to Exclude Expert Testimony Based on the Wrong Claim Constructions, filed herewith.

⁷ Ex. 1 at 2:66-3:12.

⁸ Ex. 1 at 2:66-3:7, 4:56-59.

destinations, route information, traffic and weather information, and the like.⁹ A mobile unit in a vehicle receives the destination information, determines the vehicle's current position, and determines an expected time of arrival for a particular way point.¹⁰ According to the patent, the dispatch "generates" the destination information for eventual transmission to the mobile unit.¹¹ As shown in Figure 6, which is a schematic representation of the dispatch, destination information can also be input through a variety of input devices, such as a memory, a keyboard, or any other suitable means to input information.¹² In other embodiments, a destination may be input into the mobile device before the trip, provided to the dispatch by a human operator, or requested by the operator of the vehicle.¹³

The mobile unit receives the destination information from the dispatch and determines the vehicle position.¹⁴ In response to the vehicle position, the mobile unit determines the expected time of arrival at a particular way point.¹⁵ The mobile unit can provide a more accurate expected time of arrival through the use of "way points." In the Figure 2 example, the mobile unit uses GPS technology to determine the vehicle's position along the route.¹⁶ As the driver navigates the route, the mobile unit can assist the driver by providing audible information regarding an upcoming way point and also display the way points on a map.¹⁷

⁹ Ex. 1 at 3:1-7.

¹⁰ Ex. 1 at 1:62-65, 5:5-16 & 5:53-6:7.

¹¹ Ex. 1 at 1:62-65, 5:5-16 & 5:53-6:7.

¹² Ex. 1 at 12:40-59.

¹³ Ex. 1 at 11:53-12:5.

¹⁴ Ex. 1 at 1:62-65, 5:5-16, 5:53-6:7.

¹⁵ Ex. 1 at 1:62-65, 5:5-16, 5:53-6:7.

¹⁶ Ex. 1 at 5:17-52.

¹⁷ Ex. 1 at 11:38-45.

[illegible]

¹⁹ D.I. 185 at ¶¶ 4, 9-10.

²⁰ D.I. 185 at ¶¶ 4, 9-10.

²¹ D.I. 289; Ex. 2.

²² D.I. 295; Ex. 3.

²⁴ D.I. 181 at ¶ 13.

²⁵ D.I. 181 at ¶ 13.

²⁶ D.I. 297

C. The Requirements Added by Defendants' Experts to "Dispatch"

The "dispatch" limitation was one of three disputed terms during the claim construction process.²⁷ The Court ultimately construed "dispatch" to be a "computer-based communication and processing system remotely located from the vehicle that *manages* and *monitors* vehicles."²⁸

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁷ D.I. 167 at 11-13.

²⁸ D.I. 167 at 11 (emphasis added).

²⁹ Ex. 4, ¶¶ 46, 83-122; Ex. 5, ¶¶ 116-264; *see also* Ex. 14 at 59:9-98:6; Ex. 30 at 46:9-65:8, 105:25-117:13.

³⁰ Ex. 4, ¶¶ 46, 84.

³¹ Ex. 4, ¶ 88.

³² Ex. 4, ¶ 84.

³³ Ex. 30 at 115:4-9.

³⁴ Ex. 4, ¶ 117.

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IV. SUMMARY JUDGEMENT STANDARD

Summary judgment is appropriate where, when the facts are viewed in the light most favorable to the non-movant, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986). Mere denials or conclusory statements do not create genuine disputes of material fact. *SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1116 (Fed. Cir. 1985).

V. THE ASSERTED CLAIMS

In December 2015, Plaintiff narrowed the case by electing 15 asserted claims.⁴⁶ Plaintiff's motion for summary judgment focuses on five of these claims that relate to the mobile unit (15-17, 19, and 21). The mobile unit claims depend from claim 12, and are directed to an apparatus on a vehicle for determining an expected time of arrival of the vehicle.⁴⁷

Claim 12. An apparatus on a vehicle for determining an expected time of arrival of the vehicle, comprising:
a communications device operable to receive destination information from a dispatch, the destination information specifying a plurality of way points;
a positioning device operable to determine a vehicle position; and
a processor coupled to the communications device and the positioning device, the processor operable to receive destination information from the communications device and the vehicle position from the positioning device, the processor further operable to determine in response to the

⁴³ Ex. 30 at 156:18-157:12.

⁴⁴ Ex. 30 at 209:17-210:15

⁴⁵ Ex. 4, ¶¶ 46, 83-122; Ex. 5, ¶¶ 116-264

⁴⁶ D.I. 306.

⁴⁷ Ex. 1 at 15:48-16:24.

vehicle position the expected time of arrival of the vehicle at a way point identified by the destination information and wherein the communications device comprises a cellular telephone.

Claim 15. The apparatus of claim 12, wherein the destination information further comprises an expected travel speed along a predetermined route specified by the way points, the processor further operable to determine the expected time of arrival of the vehicle in response to the expected travel speed.

Claim 16. The apparatus of claim 12, wherein the destination information further comprises traffic or weather information associated with a predetermined route specified by the way points, the processor further operable to determine the expected time of arrival of the vehicle in response to the traffic or weather information.

Claim 17. The apparatus of claim 12, wherein the positioning device comprises a GPS receiver.

Claim 18. The apparatus of claim 12, wherein the processor selects a next way point if the vehicle reaches a present way point.

Claim 19. The apparatus of claim 18, further comprising a speaker to communicate audibly information regarding the next way point.

Claim 21. The apparatus of claim 12, further comprising a display to display the way points on a map.

Claim construction is often dispositive of infringement where, as here, there is no material dispute over the operation of the accused products. The only real dispute relates to the unsupported requirements added by Defendants' experts to the term "dispatch."

VI. INFRINGEMENT BY DEFENDANTS' ACCUSED PRODUCTS

A. The TeleNav Defendants Made, Used, and Sold Mobile Units that Infringed Claims 15-17, 19, and 21 as a Matter of Law.

TeleNav and AT&T literally infringed claims 15-17, 19, and 21 as a matter of law by making mobile units (cellular telephones running the accused mobile applications) that satisfy each claim element.⁴⁸ [REDACTED]

⁴⁸ In addition to the documentary evidence advanced by Plaintiff to support its motion, Plaintiff also submits a declaration of its expert, Dr. Steven Goldberg. As set forth in his declaration, it is

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴⁹ Ex. 8 at 84:8-23, 85:3-10, 85:24-86:20; Ex. 9 at 58:3-11; 154:20-155:5; Ex. 10 at 214:6-18; Ex. 11 at TN003004.

⁵¹ Ex. 9 at 58:3-11; 154:20-155:5.

⁵³ Ex. 14 at 54-55.

1. The TeleNav accused products satisfy the “dispatch” limitation.

The Court construed “dispatch” to be a “computer-based communication and processing system remotely located from the vehicle that manages and monitors vehicles.”⁵⁴ The TeleNav Defendants do not dispute that their accused servers comprise “a computer-based communication and processing system remotely located from the vehicle.” The dispute centers on whether their servers “manage” and “monitor” vehicles as required by the Court’s claim construction.

The TeleNav Servers satisfy the “dispatch” limitation.⁵⁵ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

⁵⁴ D.I. 167 at 11.

⁵⁵ Ex. 7 at ¶¶ 67-112.

⁵⁶ Ex. 12 at 114:14-117:5.

⁵⁷ Ex. 21 at 49:17-50:3; Ex. 31 at TN000006.

⁵⁸ Ex. 32 at 3.

⁵⁹ Ex. 23 at 132:2-25, 133:1-13.

⁶⁰ Ex. 23 at 128:9-129:23; *see also* Ex. 21 at 165:3-166:2.

- [REDACTED]
- [REDACTED]

Moreover, TeleNav's Servers "monitor" vehicles by performing the following functions:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

⁷⁰ Ex. 38 at 14-15; Ex. 13 at 175:8-176:8

⁷¹ Ex. 38 at 79-80; Ex. 13 at 181:15-182:2, 183:25-184:8.

⁷² Ex. 32 at 2; Ex. 21 at 47:23-48:9.

⁷³ Ex. 42 at 1; Ex. 8 at 129:14-135:20; *see also* Ex. 23 at 128:9-129:23.

⁷⁴ Ex. 21 at 165:3-166:2

⁷⁵ Ex. 13 at 131:22-133:3, 134:4-135:18, 148:20-25; Ex. 37 at 49-52.

⁷⁶ Ex. 21 at 55:14-57:10; *see also* Ex. 13 at 98:7-22, 99:10-24, 100:1-14; Ex. 24 at 22; Ex. 23 at 39:9-17, 128:9-129:23; Ex. 22 at 120.

⁷⁷ Ex. 12 at 166:21-170:6; Ex. 43 at TN394791-801; Ex. 13 at 144:3-118, 145:9-147:3; Ex. 37 at 37-38.

⁷⁸ Ex. 13 at 80:24-81:8, 82:7-17, 85:3-5, 163:23-171:25; Ex. 24 at 10; Ex. 37 at 79-94; Ex. 12 at 122:14-124:24.

- [REDACTED]
- [REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
[REDACTED]

2. The evidence confirms TeleNav’s admission that the remaining claim limitations are satisfied.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

⁷⁹ Ex. 13 at 105:4-24, 107:19-108:7, 109:8-111:12, 194:24-195:5; Ex. 44 at 4, 9-16; Ex. 45 at 22-26.

⁸⁰ Ex. 13 at 156:19-159:19, 167:16-168:13, 200:16-205:22; Ex. 37 at 76, 84-85; Ex. 46.

⁸¹ Ex. 47 at 2; Ex. 13 at 199:18-200:6, 209:17-22, 210:25-215:1.

⁸² Ex. 14 at 54-55.

⁸³ Ex. 21 at 73:15-78:16; 80:16-85:1, 133:23-142:12; *see also* Ex. 7 at ¶¶ 59-60, 127-136.

⁸⁴ Ex. 21 at 47:1-54:10, 75:14-77:25; Ex. 12 at 35:17-21, 149:22-150:15, 245:14-21; Ex. 15, ¶¶ 61-62, 106-131.

⁸⁵ Ex. 21 at 47:1-54:10.

⁸⁶ Ex. 22 at 120; Ex. 23 at 46:9-17, 48:13-49:3, 58:10-18, 59:20-63:23, 64:9-67:3, 89:22-90:17; Ex. 24 at 12-13; Ex. 13 at 85:25-86:23, 90:15-92:8, 125:24-126:17; Ex. 12 at 135:11-22.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

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[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁹⁴ Ex. 21 at 86:3-23; *see also* Ex. 7 at ¶¶141-144.

⁹⁵ Ex. 21 at 86:3-23.

⁹⁶ Ex. 21 at 86:3-23.

⁹⁷ Ex. 12 at 159:3-15; *see also* Ex. 7 at ¶ 145.

⁹⁸ Ex. 21 at 75:14-23.

⁹⁹ Ex. 12 at 47:6-48:25; *see also* Ex. 7 at ¶ 147-148.

¹⁰⁰ Ex. 67 at VIP-ETA0085951.

¹⁰¹ Ex. 67 at VIP-ETA0085945; Ex. 31 at TN0000006; *see also* Ex. 7 at ¶ 149.

B. The TCS Defendants Made, Used, and Sold Mobile Units that Infringed Claims 15-17, 19, and 21 as a Matter of Law.

TCS/NIM and Verizon literally infringed claims 15-17, 19, and 21 as a matter of law by making mobile units (cellular telephones running the accused mobile applications) that satisfy each claim element.¹⁰² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁰² In addition to the documentary evidence advanced by Plaintiff to support its motion, Plaintiff also submits a declaration of its expert Dr. Steven Goldberg. As set forth in the declaration, it is Dr. Goldberg's opinion that TCS/NIM and Verizon infringe apparatus claims 15-17, 19, and 21 of the '377 patent (Ex. 15 at ¶¶ 4-5).

¹⁰³ Ex. 16 at 50:24-51:12; Ex. 17 at 71:13-73:4, 73:21-74:1, 74:9-74:24; Ex. 18 at 87:20-89:10, 91:20-94:12; D.I. 297.

¹⁰⁴ Ex. 18 at 87:20-89:6, 94:16-95:17.

¹⁰⁵ Ex. 16 at 44:11-16, 46:2-15, 47:15-48:3, 49:6-49:23, 50:24-51:12, 52:7-15, 52:22-53:15, 75:11-77:4; Ex. 20.

¹⁰⁶ Ex. 16 at 50:24-51:12.

[REDACTED]

[REDACTED]

[REDACTED] For these reasons, Plaintiff respectfully requests that its motion for partial summary judgment of infringement also be granted as to claims 15-17, 19, and 21 for the TCS Accused Products.

1. The TCS Accused Products are “an apparatus on a vehicle for determining an expected time of arrival of the vehicle.”

The TCS Defendants do not appear to dispute that the TCS Accused Products are an apparatus for determining an expected time of arrival. They also do not dispute the Accused TCS Products are taken on vehicles for determining an expected time of arrival of the vehicles.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The “vehicle” term first appears in the preamble of claim 12, is only a limitation if it recites essential structure or steps, or if it is necessary to give life, meaning,

¹⁰⁷ Ex. 30 at 34:23-35:11.

¹⁰⁸ *See, e.g.* Ex. 4, ¶¶ 113, 124-127, 140-149, and 182-206.

¹⁰⁹ Ex. 15 at ¶ 66.

¹¹⁰ Ex. 15 at ¶ 175.

¹¹¹ Ex. 15 at ¶ 175.

¹¹² Ex. 4, ¶¶ 128-132, 183.

and vitality to the claim. *Cataline Mktg. Int'l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002). A preamble is not limiting where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or the intended use for the invention. *Id.* The “vehicle” term is not a limitation here because claim 12 recites a structurally complete invention in the claim body and “vehicle” is merely used to state the intended use of the invention rather than to recite essential structure. But even if it were a limitation, the TCS Defendants cannot seriously dispute that the TCS mobile units are intended to be carried on vehicles because [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. The TCS Accused Products include “a communications device operable to receive destination information from a dispatch, the destination information specifying a plurality of way points.”

The accused TCS Defendants’ mobile units include a communications device operable to receive destination information from the TCS servers.¹¹⁶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹¹³ Ex. 18 at 150:17-151:14.

¹¹⁴ Ex. 18 at 150:17-151:14; *see also* Ex. 15 at ¶ 181.

¹¹⁵ Ex. 18 at 103:25-105:9.

¹¹⁶ Ex. 25 at 114:25-117:3; Ex. 26 at 56.

¹¹⁷ Ex. 25 at 269:17-24, 270:9-11, 283:2-284:8, 287:16-288:14; Ex. 16 at 98:17-99:4.

¹¹⁸ Ex. 27 at 95:6-97:8, 153:16-154:15; Ex. 28 at 15, 25-26; Ex. 29 at 47-48, 179-80; *see also* Ex. 15 at ¶ 77, 101-102.

[REDACTED]

[REDACTED]

The TCS Servers also satisfy the “dispatch” limitation.¹²⁰ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

¹¹⁹ Ex. 30 at 33:10-35:11; Ex. 4, ¶ 126; *see also* Ex. 15 at ¶ 175.

¹²⁰ *See* Ex. 15 at ¶¶ 68-97

¹²¹ Ex. 25 at 111:19-114:24; Ex. 3 at 52-57; Ex 16 at 81:4-83:6; Ex. 48 at 8, 59; Ex. 49 at TCS0006453; Ex. 50 at TCS0007658; Ex. 51 at TCS0000296; Ex. 52 at TCS0010454.

¹²² Ex. 25 at 103:6-111:10, 290:13-298:7; Ex. 26 at 55; Ex. 53 at TCS0625989-94.

¹²³ Ex. 18 at 148:21-149:10; Ex. 16 at 74:16-75:8; Ex. 51 at TCS0000298; Ex. 54 at TCS001465.

¹²⁴ Ex. 25 at 160:14-16, 160:17-163:5, 200:1-201:23, 234:5-8, 283:2-284:8; Ex. 55 at 9; Ex. 16 at 84:1-13, 102:10-103:12; Ex. 56; Ex. 18 at 77:24-78:7.

¹²⁵ Ex. 18 at 77:24-78:7.

¹²⁶ Ex. 25 at 270:9-11, 287:16-288:14.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Moreover, The TCS Servers “monitor” vehicles by performing the following functions:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

¹²⁷ Ex. 25 at 268:16-269:24; Ex. 57 at 39; Ex. 16 at 98:17-99:4.

¹²⁸ Ex. 25 at 285:19-286:17; Ex. 27 at 100:4-105:6.

¹²⁹ Ex. 25 at 103:16-104:16, 247:7-248:16; Ex. 48 at 8.

¹³⁰ Ex. 58 at TCS-NIM_01483; Ex. 59 at TCS-NIM_01174; Ex. 17 at 81:19-92:11, 92:20-95:1.

¹³¹ Ex. 25 at 99:9-25; Ex. 3 at 52-57.

¹³² Ex. 25 at 180:1-21 191:11-16, 198:3-9; Ex. 18 at 148:21-149:10.

¹³³ Ex. 25 at 133:7-136:17, 179:22-181:15; 181:23-182:9, 195:10-199:11; Ex. 60 at 36.

¹³⁴ Ex. 25 at 158:15-159:8, 169:10-170:11, 174:21-24, 179:22-181:15; Ex. 61 at 29; Ex. 60 at 10, 12, 23; Ex. 16 at 145:7-146:1; Ex. 62 at 3.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

3. The TCS Accused Products include “a positioning device operable to determine a vehicle position.”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹³⁵ Ex. 55 at 7, 10-11; Ex. 25 at 190:11-194:20, 196:4-10, 198:18-199:22, 200:1-201:23, 300:5-301:9.

¹³⁶ Ex. 25 at 210:1-4, 211:8-218:5.

¹³⁷ Ex. 55 at 16; Ex. 48 at 8; Ex. 25 at 204:7-205:13, 229:8-235:21, 248:21-249:21; Ex. 18 at 148:21-149:10; Ex. 17 at 177:18-22, 181:15-17; *see* Ex. 63 at TCS0047942.

¹³⁸ Ex. 17 at 97:18-100:8; Ex. 18 at 83:17-84:7; Ex. 58.

¹³⁹ Ex. 25 at 191:5-193:8.

¹⁴⁰ Ex. 4, ¶ 126; *see also* Ex. 15 at ¶ 175.

4. Dr. Franz wrongly maintains that “expected time of arrival” requires a “time of day” format.

Claim 12 requires “a processor coupled to the communications device and the positioning device, the processor operable to receive destination information from the communications device and the vehicle position from the positioning device, the processor further operable to determine in response to the vehicle position the expected time of arrival of the vehicle at a way point identified by the destination information and wherein the device comprises a cellular telephone.” The phrase “expected time of arrival” has been heavily litigated. The Federal Circuit ultimately concluded that the term did not exclude a remaining travel time format and construed the term to be a “time of day at which the vehicle is expected to arrive somewhere.”¹⁴¹

Nevertheless, for the subset of TCS Accused Products that “display a remaining travel time at a destination” (Group 2 Builds),¹⁴² Dr. Franz wrongly contends there is no infringement because the construction adopted by the Federal Circuit requires that expected time of arrival be in a time of day format, and not a remaining travel time.¹⁴³ He apparently adopted this view on his own reading of the Federal Circuit’s opinion.¹⁴⁴ Dr. Franz’s opinion is contrary to law. It is also contrary to the view of the TCS Defendants’ validity expert, who views the remaining travel time to be within the literal scope of the court’s claim construction of “expected time of arrival.”¹⁴⁵

██

██

¹⁴¹ 594 Fed. Appx. at 640-42.

¹⁴² D.I. 297.

¹⁴³ Ex. 4, ¶ 133.

¹⁴⁴ Ex. 30 at 44:4-45:20

¹⁴⁵ Ex. 6 at 98:12-16.

[REDACTED]

5. There is no dispute that the elements of the dependent claims are satisfied by the TCS Accused Products.

[REDACTED]

¹⁴⁶ Ex. 25 at 99:9-25; *see also* D.I. 297 at 2-6.

¹⁴⁷ Ex. 25 at 195:2-19.

¹⁴⁸ Ex. 25 at 131:9-132:23.

¹⁴⁹ Ex. 30 at 33:10-35:11.

¹⁵⁰ Ex. 25 at 134:3-135:22; Ex. 53 at TCS0626125-26

¹⁵¹ Ex. 25 at 135:16-136:1; Ex. 53 at TCS0625989-91, TCS0625947; *see also* Ex. 15 at ¶106-131, 137.

¹⁵² Ex. 3 at 53-57.

¹⁵³ Ex. 25 at 133:7-136:17, 153:17-155:5, 169:10-170:21; Ex. 53 at TCS0625990, TCS0625947.

¹⁵⁴ D.I. 297 at 2-6.

with those instructions.¹⁶² Similarly, the Court’s construction does not require the frequent (or continuous), systematic, or active monitoring of vehicle locations by the dispatch.¹⁶³ But Defendants’ experts rely entirely on these requirements (as they must) to avoid infringement. These opinions are not supported by the Court’s constructions and contradict the intrinsic record.

The Court’s claim construction and the ’377 patent do not require that the dispatch “manage” vehicles by initiating and controlling destinations sent to them. The term “control” only appears twice in the ’377 patent, and those passages do not require that the dispatch “initiate” and “control” destinations sent to vehicles.¹⁶⁴ Instead, the dispatch “manages” vehicles by sending destination information to them.¹⁶⁵ Moreover, the dispatch alone cannot “initiate” and “control” destinations sent to mobile units in vehicles. The claimed dispatch—being a computer-based communication and processing system—manages vehicles based on inputs it receives from human operators (such as dispatchers), drivers, or other sources and then generates destination information that it communicates to the mobile unit in a vehicle.¹⁶⁶ For example, Defendants’ validity expert acknowledged that “dispatch” does not itself “decid[e] which vehicles get which information,” and testified that the dispatch is “just basically doing a communications relay function.”¹⁶⁷

These added requirements are also inconsistent with the Court’s construction because they introduce a human component into the claims by requiring a human with authority over the

¹⁶² Ex. 4, ¶¶ 46, 83-122; Ex. 5, ¶¶ 116-264; *see also* Ex. 14 at 59:9-98:6; Ex. 30 at 46:9-65:8, 105:25-117:13.

¹⁶³ Ex. 4, ¶¶ 46, 83-122; Ex. 5, ¶¶ 116-264; *see also* Ex. 14 at 98:15-124:25; Ex. 30 at 83:9-89:14, 105:25-117:13.

¹⁶⁴ Ex. 1 at 2:66-3:33.

¹⁶⁵ Ex. 1 at 2:66-3:7; Ex. 6 at 101:11-102:15, 106:3-109:10.

¹⁶⁶ Ex. 6 at 101:11-102:15, 106:3-111:3, 114:4-117:5; Ex. 1 at 11:63-12:3, 12:54-59.

¹⁶⁷ Ex. 6 at 115:18-116:8; *see also* Ex. 30 at 68:19-69:14.

driver to initiate and control a destination for the vehicle.¹⁶⁸ In addition, they incorporate human intent into their construction of “manages” because “the dispatch manages the vehicles by sending them specific destination assignments, destinations that they did not request, but are obligated (as managed entities) to accept and travel to.” Thus, two different dispatches could have an identical structure and function, yet yield a different result on the issue of infringement depending on whether the human intent was to control the vehicle to a destination rather than to simply make a suggestion.

The Court’s construction also does not require that “monitoring” *must* include vehicle locations as argued by Defendants’ noninfringement experts.¹⁶⁹ The ’377 patent takes a broad view of the information that may be monitored by the dispatch. For example, the dispatch may monitor the expected times of arrival of vehicles at particular destinations, reporting times, vehicle positions, information input by the vehicle operator, information collected by various sensors, and others.¹⁷⁰ Even the TCS Defendants’ validity expert agrees that the court’s claim construction “doesn’t look like it requires monitoring the position of the vehicle.”¹⁷¹

Additionally, the Court’s construction does not require that “monitoring” of a vehicle must be “systematic” or have “temporal regularity or repetition” as argued by Defendants’ noninfringement experts. The ’377 patent touts the advantages of infrequent monitoring, along with the benefits of various conditions triggering the mobile unit to transmit information to the dispatch for monitoring.¹⁷² For example, the ’377 patent teaches that the claimed system

¹⁶⁸ Ex. 6 at 114:4-117:5.

¹⁶⁹ Ex. 6 at 133:19-23.

¹⁷⁰ Ex. 1 at 6:15-21, 8:46-65, 9:13-32, 10:43-50, 12:6-21; *see also* Ex. 6 at 127:10-23.

¹⁷¹ Ex. 6 at 133:19-23.

¹⁷² Ex. 1 at 6:18-21.

requires infrequent monitoring (such as at the beginning and end of a trip) and therefore reduces the need for additional personnel, equipment, and communications costs.¹⁷³ The mobile unit may be triggered to report information to the dispatch, such as a vehicle being off-route or late, the vehicle's engine having trouble, or a breach of the vehicle's security.¹⁷⁴ The TCS Defendants' validity expert agrees that the Court's "dispatch" construction does not require monitoring vehicles at "specific time interval[s]."¹⁷⁵

Moreover, the Court's construction does not require active monitoring by the dispatch (i.e., "keep[ing] track of the vehicle location," or "check[ing] in on the client application to see what it is doing, or to determine its location").¹⁷⁶ In fact, the patent provides several examples where the dispatch passively monitors the mobile unit in the vehicle.¹⁷⁷ The patent discloses the mobile unit generating several types of information (late expected time of arrival to a destination, sensor readings, status of the vehicle or vehicle operator, etc.) and transmitting that information without prompting by the dispatch.¹⁷⁸ The '377 patent also teaches that the mobile unit may notify the dispatch when the vehicle has reached a way point, so that the dispatch may be notified that the vehicle is still on the assigned route without needing to send a query to check on the vehicle's progress along the route.¹⁷⁹

At bottom, Defendants are attempting to do through their experts what they could not convince the Court to do during the claim construction process. Experts are not free to re-define

¹⁷³ Ex. 1 at 8:8-17.

¹⁷⁴ Ex. 1 at 12:6-21.

¹⁷⁵ Ex. 6 at 130:4-10.

¹⁷⁶ *E.g.*, Ex. 5, ¶¶ 150, 161.

¹⁷⁷ Ex. 1 at 12:6-21.

¹⁷⁸ Ex. 1 at 12:6-21.

¹⁷⁹ Ex. 1 at 9:13-15.

claim terms, especially when those definitions contradict the intrinsic record. The evidence demonstrates that the Defendants' servers both manage and monitor vehicles.

VII. MR. ANDREWS AND DR. FRANZ'S TESTIMONY CONCERNING DEFENDANTS' NONINFRINGEMENT OF THE "DISPATCH" LIMITATION IS UNHELPFUL AND UNRELIABLE.

"Once a district court has construed the relevant claim terms, and unless altered by the district court, then that legal determination governs for purposes of trial. No party may contradict the court's construction to a jury." *Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1321 (Fed. Cir. 2009). Likewise, parties are not permitted to evade the court's claim constructions by "construing," "interpreting," or "altering the scope" of the terms in the construction. *See e.g., Informatica Corp. v. Bus. Objects Data Integration, Inc.*, No. 02-03378, 2007 WL 878519, at *2 (N.D. Cal. Mar. 21, 2007) (rejecting defendant's contention that both parties could argue their "interpretation" of the court's claim construction); *EZ Dock, Inc. v. Schafer Sys., Inc.*, No. 98-2364, 2003 WL 1610781, at *12 (D. Minn. Mar. 8, 2003) ("Furthermore, the parties are not entitled to 'construe' the Court's claim construction . . .").

To prevent expert witnesses from arguing claim constructions to the jury, district courts routinely exclude opinions and testimony that rely on "interpretations" that alter the court's claim construction and preclude the party from offering the excluded opinions and testimony at trial. *E.g., Personalized User Model, L.L.P. v. Google Inc.*, No. 09-525-LPS (D. Del. Feb. 27, 2014) ("expert testimony inconsistent with the Court's claim construction is unreliable and unhelpful to the finder of fact") (Ex. 68); *Cook Inc. v. Endologix, Inc.*, No. 09-01248, 2012 WL 3886204, at *3 (S.D. Ind. Sept. 6, 2012) (explaining that defendant "did not succeed with its argument at claim construction and cannot seek to reargue its point at trial through expert testimony"); *Saffran v. Johnson & Johnson*, 2011 WL 197871, at *3-4 (E.D. Tex. Jan. 20, 2011) (excluding expert testimony contrary to court's construction); *Hochstein v. Microsoft Corp.*, No.,

07-00451, 2009 WL 2022815, at *1 (E.D. Mich. Jul. 7, 2009) (excluding testimony set forth in expert report that conflicted with the court’s claim construction); *Regents of Univ. of Cal. v. Micro Therapeutics, Inc.*, No. 03-05669, 2007 WL 2429412, at *3 (N.D. Cal. Aug. 23, 2007) (striking portion of expert report inconsistent with court’s claim construction and precluding the testimony from use at trial); *MPT, Inc. v. Marathon Labels, Inc.*, No. 04-02357, 2006 WL 1644441, at *2-3 (N.D. Ohio Jun. 13, 2006) (striking portions of an expert report and precluding testimony inconsistent with the court’s claim construction).

Defendants through their experts should not be permitted to evade the Court’s claim construction by further construing, interpreting, or altering the scope of terms in its “dispatch” construction (for the reasons explained previously) or by applying a meaning of “expected time of arrival” that was rejected by the Federal Circuit. Any testimony based on these unsupported requirements would be improper, unreliable and legally impermissible because it will confuse the jury and be highly prejudice to Plaintiff. The opinions and corresponding testimony for the term “dispatch” and “expected time of arrival” should thus be excluded.

VIII. CONCLUSION

For the foregoing reasons, Defendants’ Accused Products satisfy every limitation of claims 15-17, 19, and 21. Accordingly, Plaintiff respectfully requests that its motion for summary judgment of infringement as to claims 15-17, 19, and 21 of the ’377 patent be granted. Moreover, for the foregoing reasons, Plaintiff respectfully requests that the Court to exclude Defendants’ expert testimony of “manages and monitors vehicles” and Dr. Franz’s testimony regarding “expected time of arrival” because both experts fail to apply the Court’s claim constructions, making their testimony unreliable and unhelpful.

Dated: June 23, 2016

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